

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ROBERT I. FALK,

Plaintiff,

CIVIL ACTION NO.
97-C-0565

v.

THETA GROUP, L.L.C., SCOTT S. BELL and
R. SCOT RUBEL,

Defendants.

DOCKETED
APR 09 1998

**FINAL ORDER AND JUDGMENT APPROVING
PARTIAL CLASS ACTION SETTLEMENT**

A. Plaintiff, individually and as representative of the class hereinafter described, and defendant Scott S. Bell ("Bell" or the "Settling Defendant") have entered into a Stipulation and Agreement of Compromise and Settlement, dated May 19, 1998 (the "Settlement Agreement") for the settlement and dismissal of the above-captioned class action (the "Action") as to Bell, and have applied to this Court, pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, for approval of the Settlement Agreement, including the terms therein for a proposed plan of allocation (the "Plan of Allocation") of the proceeds of the Settlement Agreement (the "Settlement Fund"), and Plaintiff's Counsel have applied to this Court for an award of attorneys' fees and reimbursement of expenses.

B. The Court hereby certifies a class (the "Class") consisting of all persons and entities who purchased membership interests in Theta Group, L.L.C. ("Theta") from October 1, 1995 to November 26, 1996, and who have suffered damage as a result. Excluded from the Class are defendants, their immediate families, successors and assigns, the officers, directors, subsidiaries and affiliates of Theta, and all defendants' former and present counsel.

C. In the Preliminary Approval Order, the Court scheduled a hearing for July 8, 1998, at 9:30 a.m. (the "Fairness Hearing"), to determine, inter alia, whether the Settlement Agreement should be approved by the Court as being fair, reasonable and adequate, whether judgment should be entered thereon, whether the Plan of Allocation of the Settlement Fund was fair, reasonable and adequate and to consider the application of plaintiff's counsel for reimbursement of expenses.

D. The Court ordered that the "Notice of Motion for Class Certification and Approval of Proposed Settlement and Hearing on Proposed Settlement" (the "Notice") be mailed by first-class mail to each member of the Class who could be identified from the lists provided by Bell, Theta, and the Securities and Exchange Commission. The Notice informed interested persons of their right to, among other things, comment on or object to the certification of the class, the Settlement Agreement, the Plan of Allocation of the Settlement Fund and the application of Plaintiffs' Counsel for reimbursement of expenses. The Affidavit filed with the Court on July 8, 1998, establishes that there has been full compliance with the Court's directives with respect to the Notice.

E. The Fairness Hearing was held on July 8, 1998, at which time all interested persons were afforded the opportunity to be heard. The Court has duly considered all of the submissions and arguments presented with respect to the Settlement, the Plan of Allocation of the Settlement Fund and Plaintiff's Counsel's application for reimbursement of expenses.

NOW, THEREFORE, after due deliberation, it is hereby **ORDERED** that:

1. This action shall be certified as a class action for settlement purposes.
2. The partial settlement described in the Settlement Agreement is fair, reasonable and adequate, is in the best interests of the Class, and is approved for consummation in accordance with the terms of the Settlement Agreement.

3. The mailing of the Notice described in paragraph D above constitutes the best notice practicable under the circumstances and is in full compliance with the notice requirements of Rule 23 of the Federal Rules of Civil Procedure and due process.

4. Settling Defendant will continue to make himself available to Plaintiff's Counsel for discovery in New York and court appearances, as necessary.

5. Settling Defendant, after depositing \$5,000 in the Settlement Fund, will make monthly payments into the Settlement Fund of \$1250 beginning within five (5) business days of the date of this Order.

6. While Settling Defendant is current in his monthly payments pursuant to the terms of the Settlement Agreement, Plaintiff and the Class are barred and enjoined from commencing or prosecuting, either directly, representatively, or in any other capacity, any of the "Released Claims," as that term is defined in the Settlement Agreement, against Settling Defendant.

7. Should Settling Defendant fail to remain current in his monthly payments, all payments previously made shall remain the property of the Class, and the court clerk is hereby directed to enter judgment against him in the amount of \$4,000,000.00 pursuant to the terms of the Settlement Agreement.

8. Upon cashing the checks received from the Settlement Fund, Plaintiff and the Class members shall be deemed to have released, relinquished and discharged all Released Claims against Bell and are permanently barred and enjoined either directly, representatively or in any other capacity, from: (i) instituting or prosecuting any action to the extent such action is based on any of the Released Claims; and (ii) collecting upon any judgment or settlement in connection with, arising out of, or which is in any way related to the allegations of the Complaint relating to Bell.

9. After the Final Settlement Payment Date, providing Settling Defendant has satisfied the terms of the Settlement Agreement, the Action as against Settling Defendant shall be dismissed, with prejudice, on the merits and without costs, and Bell, his successors and assigns, are hereby released of and from any and all manner of claims, based on the Released Claims, as that term is defined in the Settlement Agreement, whether currently known or unknown, and whether or not yet asserted in any litigation.

10. Bell is barred and enjoined, from instituting any suit or action against Plaintiff or any member of the Class, and their respective successors and assigns, for the payment of the Settlement Fund or any portion thereof, or any other costs, expenses, fees incurred or payments made in connection with or related to the action, except to enforce the terms and provisions of the Settlement Agreement.

11. The Plan of Allocation of the Settlement Fund set forth in the Settlement Agreement is approved.

12. Plaintiff's Counsel's request for reimbursement of expenses is granted in the amount of \$4,056.39. Such expenses shall be released to Plaintiff's Counsel, with accrued interest, after the Final Settlement Payment Date, as that term is defined in the Settlement Agreement.

13. Plaintiff's Counsel reserves the right to apply to the Court for attorneys' fees and further administration expenses at a later date. Under no circumstances shall Settling Defendant be responsible for any of Plaintiff's Counsel's fees or expenses.

14. The Settlement shall not be construed or be deemed to be evidence of or an admission or a concession on the part of Bell with respect to any claim or any fault or liability or damages whatsoever, and shall not be admissible in any other court proceeding as evidence of or an admission by Bell of any fault or liability.

15. The Settlement shall not be construed or be deemed to be evidence of or an admission or a concession on the part of Plaintiff or the Class that any of the claims asserted in this Action are without merit, that damages recoverable in this Action do not exceed the Settlement Amount, or as to the value of the Released Claims as asserted against other defendants.

16. This Court shall retain jurisdiction to enforce the terms of the Settlement Agreement.

17. There being no just reason for delay, this judgment shall be deemed final pursuant to the provisions of Rule 54(b) of the Federal Rules of Civil Procedure.

Dated: _____, 1998

JUL 08 1998



U.S.D.J.